

STATE OF MICHIGAN
COURT OF APPEALS

PAUL E. ASHBY and BARBARA FILHART,

May 23, 1991

Plaintiffs-Appellees
Cross-Appellants,

v

No. 118220

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant
Cross-Appellee.

PAUL E. ASHBY and BARBARA FILHART,

Plaintiffs-Appellees,

v

No. 120089

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

Before: Brennan, P.J., and Michael J. Kelly and D.F. Walsh,* JJ.

PER CURIAM.

Defendant appeals as of right from the May 24, 1989, order awarding plaintiffs attorney fees in the sum of \$18,735 pursuant to MCL 500.3148; MSA 24.13148, and the July 31, 1989, order awarding plaintiffs \$1,776.25 in costs. Plaintiffs filed a cross-appeal, appealing the May 24, 1989, order as well. We reverse and remand the case to the trial court for findings of fact.

Plaintiff Paul Ashby was involved in an automobile accident on December 11, 1985, which rendered him quadriplegic. Defendant paid Ashby's PIP benefits until February 2, 1987, at which time payment was discontinued. Plaintiffs then filed the instant action alleging that defendant willfully, intentionally and fraudulently discontinued payment of plaintiffs' PIP benefits. The parties eventually settled by entering into a stipulation regarding the PIP benefits owed to plaintiffs by defendant. Although the parties settled with respect to plaintiffs' entitlement to PIP benefits, plaintiffs reserved the right to dispute whether an award of attorney fees was appropriate. The stipulation provided that:

The parties further agree that the only remaining issue to be resolved in this case is the plaintiffs (sic) claim for attorney fees which defendant contests. Thus the plaintiff (sic) will file a motion with this court for a resolution of that issue.

The judge who had been assigned the case and who had been hearing the case, Judge Lippitt, set a date for an evidentiary hearing to determine if an award of costs and attorney fees were proper. However, the hearing was never held. Judge Lippitt left the bench and Judge Howard took over the case. Judge Howard ordered plaintiffs to submit to the court a bill for attorney fees. After plaintiffs filed their motion, Judge Howard entered a one-page opinion indicating that he had reviewed the file and pleadings and awarded plaintiffs attorney fees pursuant to MCL 500.3148; MSA 24.13148 in the amount of \$18,735.00. Following plaintiffs' motion for rehearing, Judge Howard awarded plaintiffs costs in the amount of \$1,776.25 for expert witness fees and deposition expenses.

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

On appeal, defendant first argues that the trial court clearly erred in deciding to award attorney fees to plaintiffs pursuant to MCL 500.3148; MSA 24.13148. Pursuant to MCL 500.3148(1); MSA 24.13148(1), an insurer may be liable for attorney fees "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." The trial court must find that the insurer acted unreasonably in order to award attorney fees. Conway v Continental Ins. Co., 180 Mich App 447, 451; 447 NW2d 761 (1989), lv den 434 Mich 863 (1990). Where the delay is a result of a legitimate question of statutory construction, constitutional law or a bona fide factual uncertainty, a refusal or delay by an insurer will not be found to be unreasonable. Id. A trial court's finding of unreasonable delay or refusal will not be reversed on appeal unless it is clearly erroneous. Id., pp 451-452. In the present case, the trial court determined that plaintiffs were entitled to attorney fees pursuant to MCL 500.3148; MSA 24.13148. However, it made no mention of whether the insurer acted unreasonably. No evidentiary hearing was conducted nor did the court make findings as to whether payment for some or all of the benefits requested were unreasonably refused or delayed. Without these findings, it is impossible for us to review the issue. Consequently, we find that remand for an evidentiary hearing is necessary in order for the trial court to determine and make findings as to whether some or all of the PIP benefits requested were unreasonably delayed or refused.

Defendant further argues that the trial court abused its discretion in basing its award of attorney fees on a rate of \$150 per hour. Plaintiffs/cross-appellants contend that the trial court erred in awarding attorney fees for 124.9 hours instead of the 336 hours claimed to have been expended by plaintiffs' counsel. It is within the discretion of the trial court to assess reasonable attorney fees. Smolen v Dahlmann Apts, Ltd, 186 Mich App 292, 295; ___ NW2d ___ (1990). There are several factors to be considered in determining what constitutes reasonable attorney fees such as:

(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. Smolen, supra, at 295-296, citing Crawley v Schick, 48 Mich App 728, 737; 211 NW2d 217 (1973).

While the trial court need not detail its findings as to each specific factor, there is no indication that the trial court considered any of these factors. Therefore, should the trial court determine that an award of attorney fees is in order, the trial court must address these factors. See Butt v DAIE, 129 Mich App 211, 222; 341 NW2d 474 (1983).

Finally, defendant argues that the trial court erred in awarding plaintiffs costs for expert witness fees and deposition expenses. We agree. MCR 2.625(4) provides that: "Unless otherwise specified a settlement is deemed to include the payment of any costs that may have been taxable." Since plaintiffs only reserved the right to dispute whether attorney fees were in order, the settlement agreement entered into by the parties encompassed plaintiffs' entitlement to costs.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas J. Brennan
/s/ Michael J. Kelly
/s/ Daniel F. Walsh